IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
THURSDAY, THE SEVENTEENTH DAY OF JUNE
TWO THOUSAND AND FOUR
PRESENT
THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY
and
THE HON'BLE MR JUSTICE GHULAM MOHAMMED

WRIT APPEAL NO : 209 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 04/09/2003 in WP NO : 18517 OF 2003 on the file of the High Court.)

Between:

The Divisional Railway Manager, Southern Railway,Chennai.
..... APPELLANT

AND

1 C.Ramesh, S/o.Chinnaiah,
aged about 32 years, R/o.1-280, Tadikupet Village,
Nagari Mandal,Chittoor Dist.
2 P.Chandrasekhara Reddy, S/o.P.Peddi Reddy,
aged about 32 years,R/o.1-192, Tadukupet Village,
Nagari Mandal, Chittoor Dist.
3 The Dist.Collector, Chittoor,Chittoor Dist.
4 The Executive Engineer (R&B), Tirupathi,Chittoor Dist.
.....RESPONDENTS

Counsel for the Appellant: MR.GOURI SHANKAR SANGHI

Counsel for Respondents 1 and 2.: MR.C.V.MOHAN REDDY

Counsel for respondents 3 and 4 : Government Pleader for R&B

The Court Made the Following Order: (Per Sri BRSR.J)

The writ petitioners filed W.P.No.18517 of 2003 seeking a declaration against the appellants herein that the action in making an attempt to open the Railway Level Crossing Gate No.47, at Tadukupet, Nagari Mandal, Chittoor District which was closed six months back as illegal and opposed to public policy. The writ petition itself has been filed in purported public interest.

The case set up by the writ petitioners is that for the benefit of the vehicular traffic, a by-pass road was laid on the route Nagari to Arekonam. At that point, there were two railway level crossings viz., L.C.Nos.46 and 47 and a decision was taken to close LC No.47 by the railways in consultation with the State Government. All of a sudden, without any reason or justification, the railways have decided and started taking steps to open LC No.47, which was already closed at the behest of some of the vested interests. That during the course of hearing of the writ petition at the admission stage, it appears that a statement was made by the learned standing counsel for the Railways on the strength of the instructions obtained by him that there was no intention on the part of the Southern Railways to reopen the gate viz., L.C.No.47. Having regard to the instructions and the submissions so made by the learned standing counsel for the Railways, the learned Single Judge closed the writ petition by duly recording the statement made by the learned standing counsel.

It is stated in the affidavit filed along with the writ appeal that a decision was taken to reopen the gate viz., L.C.No.47 which was closed on 30.1.2003, after due consultation with the State Government authorities. There was some communication gap between the railways and the learned standing counsel. Even on the date when the statement was made by the learned standing counsel before the learned Single Judge, L.C.No.47 was already reopened for the benefit of the public.

In the affidavit filed by the Divisional Railway Manager, it is stated that innumerable representations were submitted to the appellants herein and also to the District Collector, Chittoor District requesting for reopening of L.C.No.47 as its closure was causing immense inconvenience and hardship to the general public, in particular to the school going children. It is submitted that by the Joint Inspection report dated 23.6.1993 it was suggested to close both L.C.Nos.46 and 47 and the District Collector, the 3rd respondent herein, vide letter dated 24.10.2002 addressed to the Divisional Engineer, has merely accepted for the closure of L.C.46 and 47. That after closure of the said L.C, a letter dated 29.1.2003 was received from the District Collector once again requesting the appellants herein to reconsider the decision in view of various representations made by the villagers of V.K.puram of Nagari mandal to keep open the level crossings 46 and 47.

It is explained that on account of pressure from the public and in view of the District Collector's letter and the letter addressed by the Executive Engineer R&B dated 11.9.2003 and in view of the rail roko on 18.7.2003 by the people, the appellants herein have decided to reopen LC No.47. The whole of the submission made in the counter affidavit reveals that the railways have reconsidered their decision having regard to the representations made by the people that the closure was causing immense hardship to the public.

In our considered opinion, the issue whether LC.47 is required to be kept open or closed is not for this Court to decide. It is not a judicially manageable situation. We do not find any reason not to accept the averments made in the counter affidavit filed by the Railways in support of the writ appeal. There is nothing wrong in the railways reconsidering the decision and obliging the public at large to reopen LC 47. We find it difficult to discern any involvement of public interest as such. No doubt Sri CV Mohan Reddy, learned counsel for the petitioner contended that

the railways having spent huge amount of Rs.45 lakh for laying by pass road, cannot be allowed to reopen LC 47 in which event the by pass road would become useless. May be, the railways at the time when the by pass road was being laid did not invite any objections or representation from the general public. In view of the representations of the local residents including the then MLA and the letter of the District collector, the railways appears to have decided to reopen the level crossing gate No.47 located at Tadukupeta, Nagari mandal, Chittoor District. In our considered opinion, it is not a fit case where this Court should interfere in exercise of its jurisdiction under Article 226 of the Constitution of India.

For the aforesaid reasons, we find no merit in the writ petition. The writ appeal is accordingly allowed and the writ petition is dismissed without costs.

//True copy//

Assistant

Registrar

17-06-2004

Msv Section Officer

To:

1.The Dist.Collector, Chittoor, Chittoor Dist.

2. The Executive Engineer (R&B), Tirupathi,Chittoor Dist.

3. 2 CCs to Government Pleader on usual terms

4. 2 CD copies

THE HONOURABLE MR.JUSTICE B.SUDERSHAN REDDY

And

THE HONOURABLE MR.JUSTICE GHULAM MOHAMMED

W.A.NO.209 OF 2004

(Order of the Bench made by Sri Justice B.Sudershan Reddy,J)

Dated 17-06-2004